IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.15516 of 2007
MUKHRAJ DEVI & ORS
Versus
STATE OF BIHAR & ANR
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5 15.09.2008 Heard Sri Shailesh Kumar Singh, the learned counsel for the petitioners and Sri Gayasuddin Khan, the learned counsel for the complainant, impleaded herein as Opp.Party no.2.

The petitioners have prayed for the quashing of order dated 5.7.2006 passed by Sri Ratan Kumar, Judicial Magistrate, 1st Class, Aurangabad, in Complaint Case No.722 of 2000 whereby he has taken cognizance for the offences under Sections 419,420,465 I.P.C. against the petitioners.

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It appears that in respect of some disputed property for which a Partition Suit no.149 of 1999 between both the parties is pending in the court of Munsif, Aurangabad, a complaint petition was filed alleging inter alia that the accused persons had sold of joint family property through a forged sale deed purported to have been executed by their mother, by getting some one else to impersonate as their mother before the Registration authority. It further appears that the learned Magistrate after holding an enquiry under Section 202 Cr.P.C. dismissed on 18.1.2001 the complaint under Section 203 Cr.P.C. Aggrieved thereby, the complainant preferred Cr.Revision no.35 of 2001/ 81 of 2001 before the Sessions Court, Aurangabad, and Sri Brinda Pathak , the then Additional Sessions Judge VI, Aurangabad, by order dated 3.12.2002 set aside the order of the

learned Magistrate with direction to the Magistrate to reconsider the matter and evidence and to pass fresh orders. It further transpires that after the remand the complainant remained absent and did not produce any witness. Accordingly, the complaint was again dismissed by order dated 20.6.2003. The complainant again preferred Cr.Revision no.119 of 2003/31 of 2004 before the Sessions Court and by order dated 21.10.2005, the revision was allowed by the learned Presiding Judge, Fast Track Court No.I, Aurangabad who directed the Magistrate to pass orders in accordance with law in keeping with the directions of the Revisional Court.

It appears that after the remand for the second time, the learned Magistrate took cognizance without examining any further witnesses and on the same set of evidence for which the complaint had been dismissed. The grievance of the petitioners is that no reason has been assigned by the learned Magistrate to have a change of heart and now take cognizance on the same evidence recorded at the enquiry under Section 202 Cr.P.C. for which he had twice rejected the complaint. It was submitted that no fresh material had been brought on record by holding a fresh enquiry under Section 202 Cr.P.C.

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The learned counsel for the complainant while admitting to the facts in issue is not in a position to defend the action of the learned Magistrate taking cognizance.

From the facts and circumstances as stated above, I am of the opinion that the learned Magistrate has misdirected himself in taking cognizance without assigning any reason on the same set of

evidence on which he had twice dismissed the complaint. Such orders cannot be sustained in law being unwarranted. Accordingly, the application is allowed and the impugned order taking cognizance is hereby quashed.

(Abhijit Sinha, J)

NKS/-

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